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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of: Jerome S. Veith

Appln. No.: 10/693,555

Filed: October 24, 2003

For: DISPOSABLE ABSORBENT
UNDERGARMENT FOR MALES

Examiner: Hand, Melanie J.

Art Unit: 3761

Conf. No.: 3611

Attorney Docket No.: 659-1148 (K-C Ref. 18546)

Mail Stop Appeal Brief - Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL

Sir:

Attached is/are:

- ☒ Appellants' Reply Brief; and
☒ Return Receipt Postcard.

Fee calculation:

- ☒ No additional fee is required.
☐ Small Entity.
☐ An extension fee in an amount of \$_____ for a _____ month extension of time under 37 CFR § 1.136(a).
☐ A petition or processing fee in an amount of \$_____ under 37 CFR § 1.17(____).
☐ An additional filing fee has been calculated as shown below:

					Small Entity			Not a Small Entity	
	Claims Remaining After Amendment		Highest No. Previously Paid For	Present Extra	Rate	Add'l Fee	or	Rate	Add'l Fee
Total		Minus			x \$26=			x \$52=	
Indep.		Minus			x \$110=			x \$220=	
First Presentation of Multiple Dep. Claim					+\$195=			+\$390=	
					Total	\$		Total	\$

Fee payment:

- ☐ A check in the amount of \$_____ is enclosed.
☐ Please charge Deposit Account No. 23-1925 in the amount of \$_____.
☐ Payment by credit card in the amount of \$_____ (Form PTO-2038 is attached).
☒ The Director is hereby authorized to charge payment of any additional filing fees required under 37 CFR § 1.16 and any patent application processing fees under 37 CFR § 1.17 associated with this paper (including any extension fee required to ensure that this paper is timely filed), or to credit any overpayment, to Deposit Account No. 23-1925.

Respectfully submitted,

February 9, 2009
Date

Andrew D. Stover (Reg. No. 38,629)

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NBC Tower - Suite 3600, 455 N. Cityfront Plaza Drive, Chicago, IL 60611-5599



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Respectfully submitted,

Andrew D. Stover (Reg. No. 38,629)

February 9, 2009

Date

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Our Case No. 659/1148
K-C Ref. No. 18,546

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Jerome S. Veith

Serial No.: 10/693,555

Filing Date: October 24, 2003

For: DISPOSABLE ABSORBENT
UNDERGARMENT FOR MALES

Examiner: Hand, Melanie J.

Group Art Unit No.: 3761

APPELLANTS' REPLY BRIEF

MS APPEAL BRIEF - PATENTS
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Pursuant to 37 CFR 41.41 and in response to an Examiner's Answer mailed December 10, 2008, Applicants respectfully request entry of the present Reply Brief. The Examiner's arguments set forth at pages 3-17 of the Examiner's Answer are substantially identical to those presented in the Final Office Action mailed March 18, 2008. Applicants' responses to those arguments were presented in an Amended Appellant's Brief, and will not

be rehashed here. Applicants respectfully disagree with the Examiner's remaining assertions (Answer at 17-18) for at least the following reasons.

The Examiner asserts that the citation to the intake "target area 52" of U.S. Patent No. 6,437,214 to Everett was intended as "further support for the motivation to optimize the placement of the retention portion of Van Gompel," rather than as a substitute for such a portion (Answer at 17-18). The Examiner's logic falls short on several fronts.

First, the Examiner's focus on only the intake area of Everett ignores the teachings of that reference as a whole. As noted in Applicants' opening brief, Everett (and Van Gompel) disclose and teach a retention region that spans nearly the entire length of the overall garment, while Applicants' claims recite that there is "no absorbent material disposed longitudinally outside of said retention region." Simply put, one of ordinary skill in the art would not have found it obvious to limit the extent of the absorbent material to the recited regions when looking at Van Gompel and Everett, alone or in combination.

Indeed, the specific region of Everett relied on by the Examiner is merely a first "intake" layer, which quickly evacuates fluids to another high saturation layer (Everett at Col. 1, line 61 to Col. 2, line 67). As such, one of ordinary skill in the art would not be led to limit the overall extent of absorbent material based on the intake area when viewing Everett in its entirety.

On this count, Applicants did not assert that the Examiner was arguing a wholesale substitution of the retention portion of Everett into Van Gompel, as asserted by the Examiner (Answer at 17-18). Rather, Applicants respectfully submit, and argued in their opening brief, that the Examiner's tunnel vision focus on the intake area of Everett ignores the teachings of Everett as a whole (Amended Brief at 12-14). At the same time, Applicants explained that if

Everett is considered in its entirety, one is led to the inescapable conclusion that Everett does not supply or suggest the acknowledged deficiencies of Van Gompel (Amended Brief at 11-12).

Second, the Examiner asserts that Van Gompel meets all of the structural limitations except the “relationship between the first length and second length of the article,” and further that the limitations of the claims are merely “optimizations of the positioning of the retention portion” (Answer at 17). Applicants respectfully disagree.

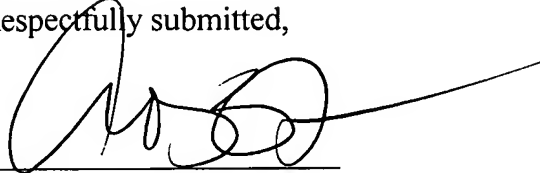
The claim limitations are directed not just to the “position” of the retention portion, but also to its relative “*size*,” which provides significant advantages over other disposable undergarments. Indeed, as explained by Applicants in the Specification, “the forward *positioning* and smaller *size* (e.g., shorter length) of the retention region is ideally suited for male incontinence needs,” results in “substantial savings with respect to material costs,” creates a “less bulky” garment in the rear region, and an “automatically” locates the absorbent insert for the user (*see* Specification at 2, lines 13-25 (emphasis added)). As previously submitted by Applicants, and acknowledged by the Examiner, it is not possible merely to shift the *position* of the retention portion of Van Gompel, or for that matter Everett, to achieve Applicants’ claimed invention. Rather, the retention region must be *positioned* and *sized* to achieve the desired results. In the present case, the cited references simply do not lead one of ordinary skill in the art to Applicants’ claimed invention. As such, the Examiner’s rejections should be set aside, with this case being passed to allowance.

Conclusion:

In summary, the cited references do not provide a valid basis for any rejection of the presently appealed claims. Accordingly, Appellants submit that the present inventions are

fully patentable over the cited references, and the Examiner's rejections should be
REVERSED.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. Stover', with a long horizontal line extending to the right.

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